IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 7201 of 1993

For Approval and Signature:

Hon'ble MR.JUSTICE K.A.PUJ

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

HIMATBHAI M BHARWAD

Versus

DY INSPECTOR GENERAL OF POLICE

Appearance:

1. Special Civil Application No. 7201 of 1993

MR SHIVANG J. SHUKLA on behalf of MR YN OZA for Petitioner No. 1

MR MA BUKHARI, AGP for Respondent No. 1-4

CORAM : MR.JUSTICE K.A.PUJ

Date of decision: 11/03/2003

ORAL JUDGEMENT

The petitioner, in this petition, has challenged the order passed by the Additional Inspector General of Police on 14-7-1983, dismissing the petitioner from service. The petitioner has also challenged the order

passed by the Commandant, State Reserve Police, Group 7, Nadiad placing the petitioner at his original salary of Rs.825/- from 1-6-1992 for the period of one year and treating the period of suspension as such.

2) It is the case of the petitioner that the petitioner has joined the services of the respondents as SRP Constable from 15-12-1980 and he has been discharging his duties with utmost care and diligence and there was inquiry pending against the petitioner. It was further stated that on 2-8-1989, the petitioner was on duty as Reserve Police on a school bus No.p-6 and his duty was to take care of the students while in transit. The petitioner was present on 2-8-1989 for the whole day during the duty hours. However, one FIR was filed against the petitioner being FIR No.98/1989 at Petlad Town Police Station for offences punishable under Sections 395, 365, 368, 332, 225 (B) of the Indian Penal Code and 25 (c) of the Arms Act and Section 5 of TADA. In the said FIR, the petitioner's name was not figuring, but subsequently the said FIR was amended and petitioner's name was inserted therein. The petitioner was arrested in connection with the said criminal case and he was suspended from service by an order dated 21-8-1989.

3) It was further submitted that because of the said detention of the petitioner, he remained absent for a day in service and thereafter, chargesheet was issued against the petitioner and later on the said chargesheet was also amended. As per the chargesheet, the only charge levelled against the petitioner was that the petitioner remained absent from duty after 10.00 p.m. without prior permission of the department. It was further stated that the criminal case was filed against the petitioner for the FIR which was filed at Petlad town Police Station and the same was registered as criminal case No.50/1991 and was tried and heard by the learned Assistant Sessions Judge, Kheda at Nadiad. The petitioner was acquitted by the learned judge vide order and judgement dated 24-7-1991. It was further stated that against the said order of acquittal no appeal was filed by the State Government and the order of acquittal was held good in the eye of law. After the said order of acquittal, the department held inquiry against the petitione on the allegation that he remained absent for a day and after the departmental inquiry, the order was passed by the respondent No.3 punishing the petitioner by placing him in the minimum pay scale of Rs.825/- for a period of one year and he has treated the suspension period of the petitioner as such.

4) Being aggrieved by the said order of Commandant, State Reserve Police, Group 7, Nadiad, the petitioner filed revision application before the Director General of Police on 25-1-1993. After perusing the record, the Director General of Police had come to the conclusion that the punishment imposed on the petitioner was very less and he, therefore, issued a showcause notice to the petitioner calling upon him to show cause as to why the petitioner should not be dismissed from service. The petitioner had filed reply to the said showcause notice on 1-6-1993. After considering the reply of the petitioner, the Additional Director General of Police has passed the order on 14-7-1993, dismissing the petitioner from service. However, because of the order passed by this Court in earlier Special Civil Application No.4898/1993, the said order was not implemented for the period of 15 days and in the meantime, the petitioner has challenged the said order of dismissal before this Court by present petition.

5) The petition was admitted by this Court on 6-8-1993 and ad-interim relief in terms of para 17(e) was granted by this Court. It is stated at the bar that under the said interim relief, the petitioner is still in the service of the respondent-authority.

6) Heard Mr.Shivang Shukla, learned advocate appearing for the petitioner and Mr.M.A.Bukhari, learned AGP appearing for the respondent.

7) Mr.Shukla, learned advocate for the petitioner has submitted that the order of dismissal was passed by the respondent No.1 on the allegation that the petitioner had remained absent for a day without prior permission. The said order of dismissal is absolutely unjust, improper and disproportionate to the misconduct allegedly said to be committed by the petitioner. He has further submitted that the order passed by the Commandant and confirmed by the Inspector General of Police placing the petitioner in minimum pay scale of Rs.825/- for a period of one year is also most unjust, illegal and the same is required to be quashed and set aside. Mr.Shukla has further submitted that initially the petitioner was suspended from service on the basis that the petitioner was detained for more than 48 hours in jail and he was suspended till the final disposal of the case lodged against the petitioner. He has further submitted that in the criminal case filed against the petitioner, the petitioner was acquitted from all the charges and therefore, as per Government Circular dated 13-4-1970,

the government servant, who is to be placed under suspension pending prosecution in the Court of Law, should be reinstated in service upon his acquittal from the charges levelled against him. He has further submitted that once an employee is reinstated in service after acquittal, then the entire period of suspension till the date of his reinstatement is to be treated as period on duty for all purposes. Despite of this clear instruction, the petitioner's suspension period has been treated as such and therefore, the order passed by the Commandant and confirmed by the Special Inspector General of Police are bad in law and require to be quashed and set aside.

8) Mr.Shukla has further submitted that time and again, the Director General of Police, Gujarat State, has issued circular that in case of absence from duty, the department should not impose a major penalty upon the delinquent. He has further submitted that as per the Circular of 1994 issued by Inspector General of Police, if any police officer remains absent from duty, or not taking interest in his duty, then in that case, the department should first give him warning and then stage by stage increase his punishment. Despite all these departmental circulars, which are binding on the respondent authorities, the Commandant has passed an order putting the petitioner in minimum pay scale of Rs.825/- and the said order was modified by the Special Inspector General of Police, the respondent No.1, and has dismissed the petitioner from service. He has, therefore, challenged all these orders and prayed for quashing and setting aside the said order.

9) Mr.Shukla has further submitted that the allegation levelled against the petitioner that he had remained absent on 2-8-1989 was totally baseless, in as much as in fact the petitioner was present on duty on 2-8-1989, but only because the criminal complaint was filed on 2-8-1989, on assumption that the petitioner has remained absent, the respondents have issued chargesheet. The departmental inquiry based on such false allegation was totally bad in law and the penalty imposed upon the petitioner on the basis of such allegation was required to be quashed and set aside. Mr.Shukla has further submitted that the misconduct alleged to have been committed by the petitioner cannot be said to be so grave so as to result into penalty of dismissal.

10) Lastly, he has submitted that the orders at Annexure A and E passed by the respondent-authorities are contrary to the law and the same should be quashed and

set aside.

11) Mr.M.A.Bukhari, learned Assistant Government Pleader, on the other hand, has submitted that looking to the facts and circumstances, the revisional authority has rightly passed the order of dismissal. The original penalty imposed on the petitioner was not adequate looking to the misconduct committed by the petitioner. He has further submitted that the petitioner was entrusted a responsible charge of school bus by which students were sent to school and they were to be brought back from the school. When such a responsible assignment was given to the petitioner and he remained absent without taking prior permission of the authorities, it should be considered as a grave misconduct and hence placing him to the lower scale is not adequate penalty and hence dismissal order was rightly passed by the authority. He has further submitted that an alternative remedy is available to the petitioner and the petitioner should have approached to the Government by way of filing revision against the said order of dismissal. Instead of doing the same, the petitioner has straightway approached this Court invoking extra ordinary writ jurisdiction of this Court. When an alternative remedy is available to the petitioner, this Court should not exercise its jurisdiction under Article 226/227 of the Constitution of India. He has, therefore, submitted that the petition filed by the petitioner should be dismissed with costs.

12) I have heard the learned advocate appearing for the petitioner, as well as, learned AGP appearing for the respondent. I have also gone through the memo or petition and all the documents attached therewith. I have considered the submissions made on behalf of the respective parties. The petitioner has challenged the different orders, one is the order of placing him at the lower pay scale and second one is of the dismissal. As far as the order of placing the petitioner at the lower pay scale is concerned, the said order is passed by the Commandant, State Reserve Police, Group-7, Nadiad and the same was confirmed in appeal. The revisional authority has enhanced the penalty and instead of placing him at the lower pay scale he has passed the order of dismissal of the petitioner from service. The charge levelled against the petitioner was that he remained absent from duty without obtaining prior leave of the authorities. It is an admitted position that a very important assignment was entrusted to the petitioner and children were placed in his charge. He has to carry these students to school and bring them back from the school. He has not discharged his duty in a manner, which was

expected from him and when he was absent from his duty a criminal complaint was filed against him involving him in commission of offence during the said period. It is no doubt true that he was acquitted from the said criminal case but the fact still remains that he was alleged to have been involved in such a misconduct. The departmental authorities are, therefore, justified in initiating the departmental inquiry against him and after that inquiry they were also justified in placing the petitioner in lower scale and treating the period of suspension as such. However, as far as the order of dismissal is concerned, this Court is of the view that it is very harsh and disproportionate looking to the misconduct said to have been committed by the petitioner. By dismissing the person on such misconduct it is virtually tantamounting to the economic death of the person and in the normal circumstances, such a harsh penalty should not be imposed on such person. The legal position is well settled and Courts have time and again observed that whenever any such harsh action is taken by the departmental authorities, the same is ordered to be struck down. Here in the present case also, when the petitioner is acquitted from the criminal case and only charge remains against the petitioner was that of absence without leave for a day. For such a charge, major penalty of dismissal cannot be imposed upon the petitioner. No case is made out by the respondent-authorities for dismissal of the petitioner from service and the original authority and the appellate authority have found it fit and appropriate to place the petitioner at the lower pay scale. It is not desirable for the revisional authority to enhance the penalty and convert the original penalty into the penalty of dismissal from service. It is also not desirable especially when the order of acquittal was passed. This is also contrary to the various circular issued by the department from time to time, with regard to the punishment to be imposed on police personnel for commission of misconduct. Taking overall view of the matter and having regard to the facts and circumstances of the case, I am of the view that the order at Annexure A, dismissing the petitioner from service, is not just and proper and it is not tenable at law. I, therefore, quash and set aside the said order. However, I do not find any fault with the order passed by the respondent No.3 at Annexure E, looking to the misconduct committed by the petitioner. The petitioner was rightly placed at the minimum pay scale for a period of one year and his suspension period was also rightly treated as such and hence no interference is called for so far as the said order at Annexure - E is concerned. Since the order of

dismissal is quashed and set aside by this Court and only the order of placing the petitioner at the minimum pay scale for one year is confirmed, the respondent-authorities are directed to give effect to this order forthwith and whatever difference for which the petitioner is entitled to and whatever other benefits, which are flowing from the employment, the same should be given to the petitioner forthwith.

13) The petition is, therefore, partly allowed. Rule made absolute to the above extent with no order as to costs.

(K.A.Puj, J.)
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